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STUDIES RELATED TO THE PROVISIONS OF THE SET AND CONSULTATIONS ON RESTRICTIVE BUSINESS PRACTICES

Replies by States and regional groupings on steps taken to meet their commitment to the Set of Principles and Rules

Note by the UNCTAD secretariat

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I. INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in section G, provides that "States which have accepted the Set of Principles and Rules should take appropriate steps at the national or regional levels to meet their commitment to the Set of Principles and Rules". Further, in section F, the Set provides for "communication annually to the Secretary-General of UNCTAD of appropriate information on steps taken by States and regional groupings to meet their commitment to the Set of Principles and Rules, and information on the adoption, development and application of legislation, regulations and policies concerning restrictive business practices".

2. As in previous years, the Secretary-General of UNCTAD, in a note dated 2 May 1994 (TD/420/8(6)), requested States and regional groupings to provide the above-mentioned information not later than 1 June 1994. In the note, the Secretary-General reiterated the secretariat's statement made during previous sessions of the Group that this information should concentrate on developments directly relevant to the implementation and application of the Set by member States, for example: (i) the introduction of new RBP legislation; (ii) the revision and/or amendment of existing RBP legislation to bring it into line with the Set; (iii) the translation and dissemination of the Set and the organizing of contacts with business circles to ensure its effective application; (iv) the exchange of information with foreign RBP control authorities to strengthen RBP controls; (v) notifications of, and action taken against, RBPs which adversely affect foreign countries and which originate in enterprises under the notifying country's jurisdiction; (vi) consultations between countries on matters related to the control of RBPs, with a view to reaching understandings; (vii) the organization of participation in, or provision of financial and other resources for technical assistance and advisory and training programmes on restrictive business practices, particularly for developing countries.

3. The information received is therefore reproduced and submitted to the thirteenth session of the Intergovernmental Group of Experts on Restrictive Business Practices for its annual review of the operation of and experience arising from the application and implementation of the Set. The present note contains replies received, as of 15 July 1994, from the following States: Benin, Central African Republic, Colombia, Ethiopia, Finland, Germany, Norway, Peru, Republic of Guinea, Syrian Arab Republic. The terminology used in the submissions is that of the submitting Government.

II. REPLIES FROM STATES

BENIN

4. The Government informed the UNCTAD secretariat that there is currently no legislation on restrictive business practices in Benin. Following the adoption of the Structural Adjustment Programme signed in 1989 with the IMF and the World Bank, Benin has adopted a new economic philosophy based on liberalism.

5. Commercial activities in Benin are regulated by Law No. 90-005 of 15 May 1990.

CENTRAL AFRICAN REPUBLIC

6. The Government of the Central African Republic communicated the following:

Since 1986 the Central African Republic has been applying the following measures:

- Abolition of restrictive measures in its trade with its partners through the abandonment of the import and export licence and authorization procedure which has been replaced by simple declarations of a statistical nature (decree No. 86/328 of 26 November 1986);

- Abolition of the import quota established under the matching procedure in favour of Central African industrial enterprises. Moreover, the matching procedure itself was abolished by decree No. 86/195 of 26 July 1986;

- Abolition of all administrative prohibition measures and other discriminatory measures affecting imports;

- Law No. 92/002 of 26 May 1992 liberalizing prices and regulating competition. In the context of the Central African Customs and Economic Union (UDEAC), the Central African Republic permits the free circulation of goods and persons and the free movement of capital between member States of the Union.

As regards exports, there is a total prohibition on the exportation of tusks and other trophies from rare or endangered species.

Following the devaluation of the CFA franc, certain provisional arrangements have been made to mitigate the adverse effects of the fall in the exchange rate until the accompanying measures can be introduced. These are:

- Measures providing for monitoring of the prices of certain imported staples through the price authorization and profit margin fixing system;

- Measures establishing the cost factor and profit margins for pharmaceutical products;

- Measures providing for control of the quality, quantity, prices and principal duty elements of imports by the Société Générale de Surveillance (S.G.S).

The various measures taken in connection with the protection of our young industries and the devaluation of the CFA franc are not aimed at placing

obstacles in the way of the Central African Republic's international trade but rather at strengthening the national economy, the basis for the development of our trade.

COLOMBIA

7. The Government of Colombia has communicated the following:

Steps taken by States to meet their commitment to the Set of principles and Rules.

(i) Introduction of new RBP legislation.

The legal framework in Colombia: The Constitution of 1991 defines free competition as "... a right of all, which implies responsibilities". 1/ It was envisaged that the State, under the law, would prevent economic freedom from being impeded or restricted and would prevent or control any abuse by individuals or enterprises of their dominant position in the national market.

In application of this principle and to adapt the administrative structure to the new constitutional system, the National Government issued decree No. 2153 of 1992 establishing a new general legal framework concerning the promotion of competition and restrictive business practices, which brings the provisions of Law No. 155 of 1959 (generally known as the anti-monopoly law) into line with the new realities.

The regulations form a vital part of the reorientation of economic policy towards an open economy and internationalization, precisely when price controls are being abolished and the privatization process is beginning.

(ii) Revision and/or amendment of existing RBP legislation

Apart from those mentioned above, there have been no other changes in the legislation.

(iii) Translation and dissemination of the Set and the organizing of contacts with business circles to ensure its effective application

As regards the translation and dissemination of the Set and the organizing of contacts with business circles to ensure its effective application, we are in the process of disseminating and publishing the rules on competition and restrictive business practices. In this connection, we are working together with the chambers of commerce, employers' associations and trade federations, etc., through a series of seminars currently being organized.

In addition, we are in direct contact with the commercial sections of every embassy and consulate so that through them the businessmen in their respective countries can be informed of the rules.

1/ Article 333 of the Constitution.

(iv) Exchange of information with foreign RBP control authorities to strengthen RBP controls

For exchange purposes we have determined which bodies are responsible for competition in each country and have asked them for information about their respective competition laws. This has led to the preparation of a directory giving the names of the competent bodies, their representatives and the above-mentioned legal provisions.

(v) Notifications of RBPs which adversely affect foreign countries

So far, we have not made any progress in this direction. However, we hope that measures such as the seminar which, with the support of UNCTAD, we are about to hold on 16 and 17 June will enable the foundations to be laid for an exchange of information in the Andean region.

(vi) Consultations between countries on matters related to the control of RBPs, with a view to reaching understandings

The Ministry of Industry and Trade has set itself the goal of exchanging information with South American countries. In Peru, where INDECOPI is the competent authority, we were present at and participated in an international event organized under the auspices of the World Bank. Moreover, we are conducting a technical training programme with the Directorate-General for the protection of competition, the highest competition authority in Spain.

With respect to G-3, we have managed to include a chapter on State enterprises and monopolies which, in our opinion, will form the basis for future progress in this area.

(vii) Organization of, participation in, or provision of financial and other resources for technical assistance and advisory and training programmes on restrictive business practices, particularly for developing countries

Through the National Planning Office, projects have been submitted to the Governments of England, Germany and Spain. The first of these is being studied; as far as the German Government is concerned, certain formalities remain to be completed before the technical cooperation programme can be launched, and, as regards Spain we are in the process of implementing the training programme. Essentially, this consists of a series of secondments of Colombian officials to the Spanish competition authority and visits by competition experts to Colombia.

ETHIOPIA

8. The Transitional Government of Ethiopia communicated the following:

To implement the "Set of the Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" was completely impossible, owing to the wrong policies pursued by the past military regime. Accordingly, there has neither been taken any step to amend or revise the existing RBP's nor to introduce new ones.

However, since the establishment of the Transitional Government a new economic policy has been adopted and steps have been taken to ensure the "Multilaterally Agreed Equitable Principles".

Recent Developments in Legislation in the area of RBP's

- Import and export licence has been liberalized;
- Foreign exchange has been made available by auction to encourage private investors;
- Unnecessary subsidies granted to producers and export enterprises have been cut;
- Tariffs levied on import and export goods have been reduced;
- Export promotion and development policy is now being drafted to encourage the export trade;
- A proclamation has been approved which gives managerial autonomy to government-owned enterprises with a view to enhancing their profitability under conditions of free competition;
- A relentless effort is being exerted by the Transitional Government to help entrepreneurs participate in International Trade Fairs, to enable them to introduce their products and study the market conditions.

FINLAND

9. The Government of Finland communicated the following:

I. Steps taken to implement the Set

(i) The introduction of new RBP legislation

The Finnish competition legislation entered into force on 1 September 1992. The competition legislation includes the Act on Restrictions on Competition, the Act on the Competition Council, the Statute on the Competition Council, the Act on the Office of Free Competition, the Statute on the Office of Free Competition, the Act on Insurance Companies and the Act on Deposit Banks.

(ii) The revision and/or amendment of existing RBP legislation

The Act on Restrictions on Competition was amended in June 1994. The amendment concerns (a) clarification of the act's application field with regard to primary production of agricultural products and (b) inspection powers of the competition authorities.

No such revisions or amendments were made which would be directly relevant to the implementation and application of the Set.

(iii) The translation and dissemination of the Set

The Office of Free Competition is not responsible for translation and dissemination of the Set and we do not even have financial resources to carry out that task.

(iv) The exchange of information with foreign RBP control authorities

The Office of Free Competition has had exchange of information with several foreign competition authorities, especially from other Nordic countries and European countries, concerning competition legislation and competition policy issues. The competition authorities of the Nordic countries exchange information on restrictive business practices controls in many multilateral and bilateral contacts. Especially in years 1992-1994, when competition legislation was reformed in Finland, Norway and Sweden, exchange of views and experience has been very useful.

(v) Notifications of and action taken against RBPs which adversely affect other countries

The Finnish competition act, the Act on Restrictions on Competition is applicable only to restraints on competition having an effect in Finland or to arrangements outside the country which are aimed at Finnish customers. The Council of State can, however, provide for the act to be applied to restraints on competition concerning foreign countries. So far there has not been such cases.

In 1993 the Office of Free Competition has made two notifications in accordance with the OECD's "Revised recommendation of the Council concerning cooperation between Member countries on restrictive business practices affecting international trade". The Office has notified to both the Swedish and the Norwegian competition authorities the action taken by the Office against a market-division agreement and a non-competition clause between a Finnish company A. Ahlström and a Norwegian company Kvaerner. The market-division agreement concerned equipment used in the continuous production of cellulose. The Office of Free Competition referred the matter to the Competition Council and requested that it would prohibit the market-division agreement and non-competition clause with regard to the Finnish market and impose a penalty for restricting competition. The Competition Council prohibited the agreement and the clause in question but did not impose fines.

(vi) Consultations between countries on matters related to the control of RBPs

The Agreement on European Economic Area entered into force on 1 January 1994. Under the agreement all cross-border trade between the Member States of the EU and EFTA is subject to common competition rules. The Office of Free Competition is the competent national authority to implement the competition rules that apply in the EEA. The Office cooperates closely with the EFTA Surveillance Authority when the EEA competition rules are applied. The EFTA Surveillance Authority notifies each competition case to the competent national authorities who, for their part, provide information and

views to the EFTA authority. Between 1 January and 27 June the Office of Free Competition has received 73 notifications and responded with a written information in 10 cases.

(vii) Technical cooperation, advisory and training programmes

Since November 1992, Finland has provided bilateral technical assistance in the field of competition policy to Estonia. There has been exchange of information on competition matters between the Office of Free Competition and the Estonian Competition Authority. The Office of Free Competition has also given advisory services as regards the drafting of the Estonian competition act. In April 1993 officials from the Office of Free Competition participated as speakers in a seminar on natural monopolies organized in Estonia. The Director General of the Office of Free Competition gave a lecture in competition issues to Estonian authorities in May 1994.

The Office of Free Competition participated in competition seminars organized by the European Free Trade Association in Bulgaria and Romania in June 1993. The other speakers at these seminars were from the EFTA Secretariat and the Swedish Competition Authority. As a follow-up of these seminars Bulgarian competition experts from the Commission for the Protection of Competition visited the Office of Free Competition in November 1993. The visitors were given presentation of the Office's work in applying competition legislation, including central principles and guidelines applied as regards different restrictive practices.

Directors and officers of the Office of Free Competition have given lectures to and had conversations with Russian authorities on competition law and policy on several occasions. In February 1994 the Office of Free Competition organized in Petrozavotsk, Russia a seminar on the importance of competition in a market economy. In May 1994 the Director of the Karelian antimonopoly committee paid a study visit to the Office of Free Competition. The Office has also given advisory services as regards the revision of the competition act of the Russian Federation.

The Office of Free Competition has also given technical assistance in competition law and policy to the Lithuanian State Price and Competition Office. In March 1994 the Deputy General Director of the Lithuanian Office paid a study visit to the Office of Free Competition.

GERMANY

10. The Government of Germany has communicated the following:

I. Steps taken by States to implement the Set

(1) Neither the German Act against Restraints of Competition (ARC) nor the Unfair Competition Act (UCA) was amended in the period under review.

(2) However, there are plans to amend the UCA with a view to eliminating a number of restrictions on the freedom of entrepreneurial action that are no longer justified. The question of adjusting the ARC to European

competition law during the next legislative period without betraying the proven principles of German law has also been given attention.

(3) The Federal Republic of Germany continued the exchange of information with foreign RBP control authorities to strengthen RBP control both bilaterally, in particular with EU member States and some neighbouring east European countries, and multilaterally in the context of the EU in Brussels and OECD in Paris. The Federal Republic of Germany is convinced that to do justice to the rising globalization of markets and new global corporate strategies national competition authorities have to cooperate more closely.

(4) To this end, the Federal Republic of Germany will take an active part in discussions about developing the international competition order. However, introducing globally binding general competition rules and institutions to implement such rules - whether in connection with the future WTO or other bodies - still would seem to be a somewhat premature step. Global competition bodies and internationally binding rules depend on a broad consensus about a market economy system and competition, which has not yet been reached everywhere. The Federal Republic of Germany will continue to lend its unflagging support to measures intended to bring about a consensus.

(5) However, even without globally binding competition rules cross-border restrictive business practices can be challenged successfully in quite a few cases. The 1986 OECD Recommendation on Notification of Restrictive Business Practices Investigations as well as bilateral cooperation agreements have proved increasingly useful in recent years. The German Federal Cartel Office (FCO) will continue the practice (begun in 1992) of informing OECD non-member countries of pending FCO proceedings affecting the interests of the nations concerned.

(6) In an effort to share with other States its knowledge of the diverse forms of RBPs and the way to deal with them, the Federal Republic of Germany again carried out a number of technical cooperation, advisory and training programmes in the period under review.

(7) At the international level and in cooperation with UNCTAD the German Government continued during the reporting period its series of competition law seminars for senior officers of national competition authorities with a seminar for India. Further seminars are in preparation.

(8) As further measures in the area of German technical assistance, in particular for developing countries, the Federal Ministry of Economics and the FCO hosted delegations, e.g., from the People's Republic of China, India, Indonesia and Viet Nam as well as from a number of east European countries and successor States to the Soviet Union which sought information and advice on competition matters.

(9) The FCO also continued its exchange programme for officials as well as its training programmes for senior officers from other national competition authorities in the period under review. In December 1993, e.g. two members of the competition authority in Ghana spent a fortnight at the FCO

at the request of UNCTAD. In the period under review, the number of training programmes and exchanges of officials with east European States increased considerably.

NORWAY

11. The Government of Norway has communicated the following:

INTRODUCTION OF NEW COMPETITION LEGISLATION

The Competition Act and the Price Policy Act, both of 11 June 1993, entered into force on 1 January 1994. From that date the Price Act of 1953 was repealed. For details on the new legislation, see the Price Directorate's contribution of 22 November 1993 to the UNCTAD Handbook and the attached booklet and brochure on the Norwegian competition legislation.

The EEA Agreement entered into force on 1 January 1994. From that date the competition rules of the Agreement have been part of Norwegian legislation. The EEA competition rules correspond to the competition rules of the European Union.

ADVISORY AND TRAINING PROGRAMMES

From 25 January to 3 February 1994 two seminars were arrange by UNCTAD. The seminars which lasted for three days took place in Malaysia and Fiji. These seminars were partly financed by Norway, and the Norwegian Competition Authority sent one lecturer. This was the sixth time Norway contributed to the financing of advisory and training programmes for developing countries.

PERU

12. The Government of Peru has communicated the following:

I. Steps taken by States to meet their commitment to the Set of Principles and Rules

(a) Introduction of new RBP legislation

During the last year no new legislation has been introduced. It should be noted, however, that the existing Peruvian legislation is quite advanced. Thus, legislative decrees Nos. 668 and 701, which incorporate the mandatory rules ensuring the elimination of RBPs, are fully applicable.

Furthermore, at the constitutional level, a new State Constitution has been promulgated. Article 61 states that: "the State shall promote and monitor Free Competition. It shall oppose any practice that restricts competition and the abuse of a dominant or monopolistic position. No Law or agreement may authorize or establish monopolies".

(b) Revision and/or amendment of existing RBP legislation

There has been no amendment of the existing RBP legislation. Nevertheless, in the Technical Secretariat of the Free Competition Commission steps have been taken to revise the existing legal framework by drawing up draft regulations which are currently being studied with a view to subsequent promulgation by the Government.

(c) Translation and dissemination of the Set and the organization of contacts with business circles to ensure its effective application

A national dissemination programme has been drawn up. This will involve talks, lectures, panels and seminars aimed at both the academic and the business and industrial sectors in every region of the country.

At the same time, talks have been scheduled with all the country's trade and industrial bodies and associations.

(d) Exchange of information with foreign RBP control authorities to strengthen RBP controls

Approaches have been made to the Spanish control authority (Tribunal de Defensa de la Competencia), as well as to the Federal Trade Commission of the United States and the Competition Office of the Colombian Ministry of Industry and Trade, with a view to exchanging information and arranging participation in a conference on free competition and RBP control measures held in Peru from 6 to 8 April.

REPUBLIC OF GUINEA

13. The Government of the Republic of Guinea has informed the UNCTAD secretariat that:

At present, the Republic of Guinea has no legislation specifically concerning RBPs.

However, it should be noted that, in connection with the introduction of free enterprise and the promotion of private investment and privatization in Guinea, a law regulating competition and price liberalization is in the course of being adopted.

SYRIA

14. The Government of Syria has communicated the following:

1. In its foreign trade, the Syrian Arab Republic is pursuing a constantly "open-door" policy towards the outside world and, from the p actical and legislative standpoints, there are no restrictive business practices, nor is there any new legislation in this regard, with the exception of the following official measures:

(a) Prohibition or restriction of the import of some goods with a view to protecting public morals, public health and public order.

(b) The provisions of the boycott of Israel and the prohibition of dealings with commercial companies and institutions that are cooperating with Israel.

2. In the light of the above, there has been no need to issue any new studies, guidelines or reports relating to restrictive business practices.